[XXXVIIth Year.] [No. 1819.]

MARYLAND GAZETTE.

THURSDAY, NOVEMBER 22, 1781.

For the MARYLAND GAZETTE.

AS a late event may create various conjectures, and afford an opportunity for the ignorant and uninformed to doubt, or for the depraved or diſſaffected to cavil, I think it may not be improper to lay a ſtate of the fact, and the conduct of the general aſſembly, before the public. The conſtitution and form of government *directs*, "that a governor be elected *annually* on the *ſecond Monday of November*; and that the council to the governor be alſo elected annually on the ſecond *Tueſday* of the ſame month, by the joint ballot of the ſenate and houſe of delegates." A ſufficient number of members did not attend on laſt Monday or Tueſday week, to compoſe either branch of the legiſlature, and conſequently an election of the governor or council was not made on thoſe days. As ſoon as the number of members required by the conſtitution to compoſe a ſenate and houſe of delegates appeared, they proceeded to an election of a governor and council, by joint ballot. A queſtion roſe, whether the ſenate and houſe of delegates, by joint ballot, could elect a governor and council on a day different from the day appointed by the form of government. I conceive, that the election was properly made, and agreeable to the conſtitution, and that it was the indiſpenſible duty of the aſſembly to make it.

The queſtion depends on the principles of government, and our conſtitution, eſtabliſhed by the convention in 1776. Our bill of rights declares, "that all government of right originates from the people, *is founded in compact only*, and inſtituted ſolely for the good of the whole." Before the revolution, the inhabitants of this ſtate lived under a mode of government, in the knowledge and memory of every man. The king of Great-Britain, by breaking the *original compact*, ſubverting the conſtitution, and violating the fundamental laws of the empire of Great-Britain, and by declaring the people of this and the other ſtates out of his protection, compelled them to renounce their allegiance, and aſſume government under the authority of the people.

The framers of our preſent form of government did not conſider, that the *conſtitution*, or *compact*, under which they and their conſtituents had lived, was diſſolved or annihilated, by the wicked and tyrannical conduct of the king of Great Britain, and his parliament; but as he had renounced, or *abdicated* the government, by his open, wanton, and repeated violations of his part of the *original conſtitution or compact*, recogniſed, and confirmed at the revolution in 1688, and ſecured by his coronation oath; and as the Britiſh parliament had aſſumed a right to make laws to bind them in all caſes; and as force was employed to compel ſubmiſſion; they conceived themſelves juſtified, and required, for the preſervation of the liberty, ſafety, and happineſs of the people, to renounce any connection with, or obedience to, either the Britiſh king or parliament. Such parts therefore of the old conſtitution, as eſtabliſhed a government by a king and parliament, was annihilated; but other parts, which gave a right to a free government, other laws made by the conſent of the people, and ſecured the right of perſonal liberty and property, remained. The *eſſentials* of the *compact* were preſerved, the *form* only was abolished. The idea was inadmiſſible, that the ancient *conſtitution* or *compact* of the ſociety was diſſolved, and that all government, and municipal laws ceaſed, and that the people returned to a ſtate of nature. The conſequences are obvious and deſtructive of the object intended, the preſervation of liberty and property. The common law of England, and the ſtatutes of England and Great-Britain, applicable to our local circumſtances, or introduced into our ſyſtem of juriſprudence, and the acts of aſſembly in force before the revolution, were conſidered as the inherent right of our people, and all property acquired, agreeable to the former laws, was ſecured to the proprietors. Their *conſtitution* can only be conſidered as a compact, or agreement, by which the people collectively determined, and eſtabliſhed the form of government, limited the ſupreme authority, and regulated the manner by which they would be governed. The government is divided into three ſeparate and diſtinct parts, *legiſlative*, *executive*, and *judicial*. The ſupreme power is veſted in the legiſlature, conſiſting of two branches, the ſenate and houſe of delegates. The executive power is to be elected by the legiſlature; and the judicial is to be appointed by the executive. They all derive their exiſtence from the *compact*, and are conſequently the creatures of it, and, being created by the conſtitution, they are inferior to it, and any act of the legiſlative, executive, or judicial, ſubverſive of, or contrary to, the form of government, is, *ipſo facto*, void; and a million of precedents of acts by the legiſlature (though called *laws*, and cloathed with the uſual forms) repugnant to the conſtitution, can avail nothing, or affect it in the leaſt degree.

Our form of government cannot be altered, changed, or abolished, but muſt for ever remain unimpaired and inviolate, unleſs altered, changed, or abolished, by the ſame power, by which it was created, to wit, the power and conſent of the people. The conſtitution has pointed out the mode, by which ſuch authority and conſent is to be obtained. The political exiſtence of our government is perpetual, unleſs determined by the will of the majority of the people. No external force, or internal diviſions or commotions, no negligence, or artifice, can impair, diſſolve, or deſtroy it. The tenure, by which every citizen holds his ſhare in the benefits and advantages derived from, or ſecured by the conſtitution, is the voice of a majority; and they, and they alone can, in any the leaſt degree, change or annihilate any part of it. No greater abſurdity in government can be maintained, than that any act of commiſſion, or omiſſion, can diſſolve or affect the conſtitution or compact made by the people. If ſuch an opinion could be ſupported, this conſequence muſt *neceſſarily* follow, that though our conſtitution was formed to ſecure perſonal liberty, and civil and religious rights, and the right of acquiring and holding property, the wickedneſs, folly, or negligence, of a very *ſmall part* of the community, could deſtroy the compact made by the *whole*, introduce the wildeſt anarchy, annihilate all laws, and force us into a ſtate of nature. The abſurdity of ſuch a doctrine is ſo ſelf-evident, that the man, who is not convinced by barely ſtating the conſequences of it, is not worthy of more trouble.

The limited wiſdom of man cannot frame a government, or laws, which can provide for the many unforeſeen events, which may afterwards occur. Omniſcience alone can penetrate into futurity, and guard againſt all poſſible inconveniences. The eſſence or ſubſtance of our conſtitution, ought to be ſacredly obſerved. It was introduced and framed to maintain the people in the enjoyment of the rights and privileges of free citizens, and, for that purpoſe, to ſecure a government by laws made by the conſent of the people. Theſe principles being kept in view, the queſtion will admit of eaſy diſcuſſion.

The conſtitution directs, "that the governor, and the council, be elected, by the general aſſembly, and appoints a particular day for the choice." The *ſubſtance* is, that the legiſlature be inveſted with the power to create the executive; the *time* is only *directory*, and not *ſubſtance*, but *form*. From accident (as in the preſent caſe, the unexpected and extreme ſeverity of the weather) a ſufficient number of perſons, to compoſe the legiſlature, did not meet, and elect on the days mentioned in the form of government. If the choice cannot be made on any other day, one of *three* conſequences muſt follow; the whole government muſt be diſſolved; or we muſt remain, for a year, without an executive compoſed of a governor and council, *conſtitutionally* elected; or the aſſembly muſt inveſt ſome other perſons with the executive power, until the days of the next annual election, or for a ſhorter period. The two firſt are inadmiſſible, for the reaſons before urged; and the third is contrary to the *ſubſtance* of the conſtitution, and therefore the appointment would be void. The executive powers of government can only be exerciſed by a governor and council, conſtitutionally elected, and their powers, or the duration of them, cannot be abridged. Many caſes may be ſuggeſted, which would prevent a choice on the days appointed. In time of war, the enemy may acquire poſſeſſion of the ſtate, and it might be impoſſible for the legiſlature to aſſemble, (as lately in Georgia and South-Carolina) or ſo many of the members of the aſſembly may be captured, as not to leave a ſufficient number to compoſe a legiſlature: theſe events are not improbable. Becauſe the conſtitution has not made proviſion, and declared what ſhall be done, in ſuch caſes, is it reaſonable that the whole government ſhould be diſſolved? it may happen, that a majority of one, or both branches of the aſſembly, may remove out of the ſtate, refuſe to act, or die: either, or all of theſe events might reduce the number, and render an election impoſſible*.

The conſtitution directs "an annual election of delegates, in each county, on the firſt Monday of October." If ten of the eighteen counties ſhould refuſe†, or be prevented by the enemy from electing repreſentatives; or if forty of the perſons choſen ſhould remove out of the ſtate, decline to act, or die; muſt the government be diſſolved? The conſtitution directs, "that annually on the firſt Monday in September, in every fifth year, electors of the ſenate be choſen." If the election be prevented by the enemy, or if fifteen of the electors remove, decline, or die, muſt our conſtitution loſe its exiſtence? By the conſtitution, "not leſs than a majority of the ſenate can conſtitute an houſe, and in caſe of refuſal, death, reſignation, diſqualification, or removal out of the ſtate, ſuch majority (being eight) may fill up the vacancy." If eight ſenators ſhould remove out of the ſtate, decline to act, or die, muſt our government be diſſolved? The conſtitution directs, that the legiſlature meet annually on the firſt Monday of November. If prevented by the enemy (as lately in Georgia and Carolina) or by any other cauſe, muſt our government ſuffer a political death? The conſtitution directs, "that ſheriffs be elected, on the firſt Monday in October, in every third year‡;" and "that all civil officers of the appointment of the governor and council (who do not hold commiſſions during good behaviour) be appointed, annually, in the third week of November:" if the election, or appointment, be not made, from any cauſe, muſt it follow that the conſtitution is diſſolved? The conſtitution directs, "that on the refuſal, death, reſignation, &c. &c. of any member of the ſenate, or council, that the ſenate or council, immediately thereupon, or at their *next* meeting thereafter, fill up ſuch vacancy, by ballot, &c." If a vacancy ſhould happen in the receſs, or adjournment, and the ſenate, or council, ſhould neglect to elect at their *next* meeting after ſuch vacancy, cannot an election be made at any other time?‖ No proviſion is made by the form of government, in caſe the governor, or the council, or the members of the legiſlature, ſhould be incapacitated by ſome natural and involuntary defect, as ſickneſs, lunacy, or the like, from exerciſing the office, or truſt repoſed in them, or in caſe the legiſlature, when met to elect a governor or council, ſhould be prevented by the receſſion of ſo many of the members, as not to leave the number required by the conſtitution, to compoſe each branch of the legiſlature. It has frequently happened, that one member of either branch, by departing, would break up the aſſembly. Many other caſes may happen in a ſucceſſion of ages, and is it not evident, that a power does, and muſt exiſt, in and by the conſtitution, or compact, to provide in all the caſes ſuppoſed, and ſimilar exigences? The

* *By the conſtitution of Great-Britain, writs of election could only iſſue in the name of the king, and under the great ſeal. King James II, having attempted to deſtroy the civil and religious rights of the nation, on the arrival of the prince of Orange, fled to France, having deſtroyed the writs of election, and thereon caſting or deſtroyed the great ſeal. In this emergency, by the advice of the houſe of lords, and the members of the parliaments in the reign of Charles II. and the aldermen and deputies of the common-council of London, the prince of Orange wrote letters to the counties, cities, &c. to elect repreſentatives to meet in convention. If any of the caſes ſuppoſed ſhould ever happen, ſimilar meaſures ſhould be adopted.*

† *The conſtitution directed an election of delegates for the city of Annapolis on the 25th of December, 1776. The citizens, from an opinion that the conſtitution had deprived them of certain privileges, refuſed to make any choice, and ſo univerſal was their diſſent, that neither candidates or voters appeared. The houſe of delegates iſſued a warrant for an election, and a choice was made.*

‡ *The conſtitution makes no proviſion, in caſe an election for ſheriffs be unſkilfully or unduly made, and no power is created by the conſtitution, to determine the validity of ſuch elections. An act paſſed in the firſt ſeſſion held under the conſtitution, by which the governor and council were empowered to judge of and determine the validity of all elections for ſheriffs, and of not made fairly and freely, and agreeable to the conſtitution, to iſſue new writs of election.*

‖ *It is ſaid that the ſenate, in ſeveral inſtances, omitted to elect, at the next ſeſſion after the vacancy happened, and that at a ſubſequent ſeſſion they filled up the vacancy.*

contract was entered into to settle the constitution, to create the great essentials of government, the legislative, executive, and judicial powers, and to place them in distinct and separate hands, and to render the security for liberty and property permanent and stable, and not to exclude provisions, at all times, and on all occasions, for extraordinary cases, exigences and necessities, which might happen, not infringing, but executing the fundamentals of the compact. The great maxim of every government ought never to be forgot, SALUS POPULI EST SUPREMA LEX. If it were otherwise, and a different doctrine should be admitted, we should be continually exposed to difficulties, dissensions, and war. If the government is to be dissolved, because an executive officer is not elected on the day appointed, (and in many cases it might be impossible) we shall be in a most miserable situation, and our government a rope of sand. On every such event a convention must be called to erect a government, and, in the mean time, no law can be executed, no debts can be compelled to be paid, no offences punished, no mode adopted to obtain right or punish wrong.

No other consequence can flow from the lapse of the time but this, that for the intermediate space, the state remains without an executive §. This ought to be avoided, and it is hoped that the assembly will pass laws to punish the negligence of their members, and to compel their punctual attendance.

A REVOLUTIONIST.

Nov. 23, 1781.

§ *In every fifth year, by our constitution, we have no legislature for a whole month. This defect can only be remedied by a provision, made agreeable to the directions in the form of government.*

NEW-LONDON, *October* 26.

ON Thursday of last week, captain Thomas Parks, in a small privateer sloop, being on a cruise, in the Sound, he discovered under Long-Island shore, two gallies which appeared to be full of men; and finding his vessel not capable of attacking them with a probability of success, he stood for this harbour, and on his arrival acquainted captain Wattles, of the Comet privateer, of what he had discovered; about 30 volunteers immediately went on board the Comet, and both vessels proceeded to Oyster-Pond, when they discovered the above gallies near Shelter-Island, endeavouring to get out of the bay; but being closely pursued, both gallies ran on shore at Southold, and the people (60 or 70 in number) quitted them and made their escape. The gallies were immediately taken, and on Friday brought to this harbour; one of them mounted three and the other two cannon, 16 muskets and a variety of articles were found on board. They had been cruising in the Vineyard-sound, where they had captured several vessels, but they had all been retaken; they had also drove on shore a brig from the West-Indies, Pond, master, belonging to Milford, and burnt the vessel.

CHATHAM, *October* 31.

All accounts from New-York agree, that some of admiral Graves's squadron have returned to Sandy-Hook, in a very shattered condition.

ANNAPOLIS, *November* 22.

Yesterday afternoon his Excellency General Washington arrived in this city, on his way to the northward.

His Excellency Thomas Sim Lee, Esq; is unanimously elected governor of this state.

The honourable John Hoskins Stone, James Brice, Jeremiah Townly Chase, Samuel Turbutt Wright, and Benjamin Stoddert, are chosen members of the council.

*** *No pieces will be inserted in this gazette unless the authors send their real names to the printers.*

THERE is at the plantation of Joseph Pean, living near Snowdens iron-works, Anne-Arundel county, taken up as a stray, a bright bay gelding, 3 years old, hanging mane, switch tail, no perceivable brand, trots and gallops, has a small star and snip, about 15 and a half hands. The owner may have him again on proving property and paying charges. 1 80 3w

THERE are at the plantation of Elizabeth Hood, on the head of South river, Anne-Arundel county, two small strayed steers, they appear to be about 3 years old, one a brindle and the other a brown with a small white stripe on his back, and his two hind feet white, they both are marked, but cannot be ascertained. Their owners are desired to prove property, pay charges, and take them away. 2 w1

THIRTY SHILLINGS REWARD.

STOLEN or STRAYED from the pasture of Charles Carroll of Carrollton, a black horse, aged 7 years last spring, near 15 hands high, both switch tail, branded on the near buttock and shoulder CC, trots and gallops, has no shoes. Whoever will deliver the said horse to the subscriber, at Mr. Carroll's quarter near Annapolis, shall receive the above reward with thanks. 3w

JAMES SEARS.

N. B. The brand may not be perceived as it is but slight. 7

TAKEN by John Brown, within nine miles of Annapolis, a forrel mare, about 14 hands high, a natural pacer, no brand, has a star in her forehead and a small blaze above mid-way her face, white hind legs, long switch tail, and her mane hangs on the near side. The owner may have her again on proving property and paying charges. 1 80 3w

STOP THE VILLAIN.

FOURTEEN GUINEAS REWARD.

Prince-George's county, Carrollsburg, October 31, 1781.

WAS taken by force, from a negro boy, the 22th of this month, on the road between Annapolis and the Governor's-bridge, a bay horse, saddle and bridle, and rode off by a middle sized man, dressed in a short brownish coloured jacket, and overall trousers, and was seen cross Patuxent about three miles above the bridge, supposed to be a deserter, as he was seen on the road the Saturday before going towards Annapolis, and said he was discharged from the hospital at George-town. The horse is about 14 hands high, well made, and about 10 years old, branded on (I believe the off) buttock T H, shod before, the shoes far worn, he has a remarkable light trot, and a fast laboursome gallop, frequently heaves his head when warmed in riding. The saddle about half worn, and has a much larger covered nail on the right side before than the outer three, over a small rip in the flap. Whoever secures the villain, that he may brought to justice and convicted thereof, and returns the horse and saddle to the subscriber, shall receive the above reward, or four guineas for the horse and saddle, and reasonable charges if brought home.

w1 3 IGNATIUS FENWICK.

NOTICE is hereby given that the subscriber intends to petition the general assembly of Maryland, at their next session, to make over to him a tract of land called Hardesty, being near Hunting-town, now in the possession of Joseph Hall.

GABRIEL CHILDS. 7

Office for confiscated estates, Annapolis, November 7, 1781.

TO be sold at vendue, on Wednesday the 5th of December next, at Mrs. Urquhart's tavern, a valuable tract of land called Harbour, containing about 940 acres, late the property of the Principio company. This tract lies on Curtis's creek, within a few miles of Baltimore town.

On Friday the 7th, will be sold at Baltimore-town, that elegant and well improved seat called Hunting-ridge, late the property of Daniel Dulany, of Daniel, Esq;

On Saturday the 8th, at Kingsbury iron-works, will begin the sale of the remainder of the property which belonged to the Principio company, lying in Baltimore county, consisting of a few small and convenient farms, 20 valuable negroes, stock of every kind, and a great variety of farming utensils.

On Wednesday the 12th, will be sold at Harford-town, Harford county, several valuable tracts of land, to wit:

A tract containing about 300 acres, lying on Deer-creek in said county, on which the old forge formerly stood, late the property of the Nottingham company.

A tract called Winter's-run, in said county, containing about 200 acres.

And a tract called Jones's-inheritance, in said county, containing about 240 acres.

The whole, except the Nottingham property, to be sold on one, two and three years credit, for specie, or the new bills emitted the 10th of May, 1781, to the actual value thereof. The Nottingham property, for specie, or the state emission in 1780, on 5 years credit. The purchasers to give bond on interest, with two good securities.

3 By order, J. BAXTER, clk.

THERE is at the plantation of Gerard E. Caulin, Esq; in Charles county, taken up as a stray, by Josias Boswell, overseer to said Caulin, a dark brown mare with a small blaze in her face, reddish about the nose, dimly branded on the near buttock apparently thus, N C, about 15 hands 2 inches high, is a little rubbed with the saddle, and appears to be 8 years old. The owner is desired to prove his property, pay charges, and take her away. 2

THERE is at the plantation of Richard Bear, near Nottingham, taken up as a stray, a sorrel broke mare filly, appears to be 3 years old, 14 and a half hands high, her off fore foot white, a blaze in her face, no perceivable brand. The owner is desired to prove property, pay charges and take her away. 2

November 1, 1781.

WANTED AN OVERSEER.

A SINGLE MAN, of a sober industrious character, that can be well recommended, may meet with good encouragement, by applying to the subscriber, who has to let a compleat tobacco plantation in good repair, about three miles from Annapolis.

2 WILLIAM THOMAS.

Alexandria, November 12th 1781.

Will be sold to the highest bidder, on Wednesday the 19th of December next, if fair, if not the next fair day, at the subscriber's plantation on Piscataway in Maryland,

TWENTY-FIVE likely young country born NEGROES, consisting of men, women, and children. It is necessary to observe, that those negroes are sold for no fault, and that they are equal to any negroes in the state; among whom are several likely young breeding women, well acquainted with cooking and all kinds of house work. Also at the same time and place will be sold, horses, hogs, sheep, and cattle, of the very best kind, together with all kinds of plantation utensils. The above will be sold for ready money, or twelve months credit, at the option of the purchaser; if the latter, to be on bond with security. I have likewise to let, two very valuable plantations on Patowmack river, sufficient for ten or twelve hands to work, on which is sowed 1[illegible] bushels of small grain. On one of the said plantations is a very commodious and well fixed distillery, calculated for either brewing or distilling, with several fine stills and a large iron boiler, which I will rent or sell with the plantation. The terms may be known by applying to

w3 2 WILLIAM LYLES, jun.

Port-Tobacco, November 7, 1781.

To be sold by the subscriber, living near Port-Tobacco, in Charles county, on Monday the 10th of December next, at public sale,

SUNDRY articles of houshold furniture, some plantation utensils, a single chair of fashionable good repair, a very good collection of books chiefly on divinity, several or eighty bushels of Indian corn, a considerable quantity of corn fodder, and a few neat cattle. The greatest part of the above articles will be sold for tobacco, either payable down, or on six months credit with interest, as may best suit the purchasers; but the chair, and some other small articles, will be sold for ready cash, or half to be paid in specie, and the other in paper money at the passing value.

2 3w JOANNA HAMILTON.

THE inhabitants of Queen-Anne's county intend to prefer a petition to the general assembly of the state of Maryland, for an act of assembly to dispose of the old court-house and other public property in Queen's-town, and to purchase a quantity of land at the head of Corsica creek, whereon the public buildings for the use of the county may be erected, at such time and particular place as in the judgment of the general assembly shall be appointed and ascertained; and in the mean time for holding the courts of election, and the county and orphans courts, at the dwelling house now occupied by Elijah Minor, near Chester-mill, and also for the clerk and other public officers, to attend there until public buildings can be erected for the accommodation of the public, at the place directed and ascertained by the general assembly. 8w

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Calvert county, November 1, 1781.

COMMITTED to my custody as a runaway a negro man named GEORGE, who he belongs to Charles Gutridge, of Charles county, he is about 20 years of age, 5 feet 7 or 8 inches high. His master is desired to take him away and pay charges to 3w

2 THOMAS GRAY, sheriff.

Swamp, Oct. 30, 1781.

THIS is to acquaint my customers in general who have leather at my yard, that I cannot deliver their leather without being paid for it in specie; I am forced to pay in specie for oil and labour, and am in such situation that I cannot give credit. 2 BENJAMIN HURST.

P.S. Those who have offers in my hands [illegible]

TO all whom it may concern; the subscribers of Washington county, do hereby give notice, that they intend petitioning the next assembly to establish, by a division of the [illegible]

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